IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 3886 of 2005

Between:

S. Chandra Rao, S/o. Appa Rao,
R/o. Sitharampuram,. Tuni, East Godavari District.

..... PETITIONER

AND

1 The Regional manager, APSRTC, East Godavari REgion, Rajahmundry.
2 The Depot Manager, APSRTC, Tuni Depot, Tuni, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not considering the candidature of the petitioner for appointment to the post of driver in pursuance of the paper notification No. E6/684(i)/04 dt. 27-11-2004 as illegal, arbitrary and against the Art. 16 of the Constitution of India and consequently direct the respondents to consider the candidature of the petitioner for appointment to the post of driver in pursuance of the paper notification No. E6/684(i)/04 dt. 27-11-2004 by taking into consideration of petitioner services rendered in strike period.

Counsel for the Petitioner : Mr.V.V.N.NARAYANA RAO

Counsel for the Respondents : KUM.B.G.UMA DEVI

The Court at the stage of admission, made the following :

ORDER:

Questioning the action of the respondents in not considering the candidature of the petitioner for appointment to the post of Driver in pursuance of paper notification dated 27.11.2004, the present writ petition is filed seeking a direction to the respondents to consider the case of the petitioner for appointment to the post of Driver.

According to the petitioner, he was initially appointed through a regular selection process in the year 2001 and worked in the respondent-Corporation when some of its employees underwent indefinite strike. When the strike was called off, petitioner along with some others were removed from service. According to the petitioner, he was given assurance by the respondent-Corporation that his case will be considered when the regular notification is issued. Thereafter, the impugned notification dated 27.11.2004 was issued for filling up the posts of Drivers in the respondent-Corporation. Though the petitioner was selected in Driving Test and interviewed by the respondents, his name was not found in the select list. In this connection, he made a representation dated 25.2.2005 to the Managing Director, A.P.S.R.T.C. requesting him to consider his case. Since no reply was forthcoming, the present writ petition is filed.

The learned counsel for petitioner vehemently contends that since the petitioner was selected in the regular process of selection in the year 2001, the respondents should have selected him by duly taking into consideration of his past service.

On the other hand, the learned Standing Counsel for APSRTC opposed the same on the ground that the petitioner was not qualified in the interview and therefore, he was not selected. The question of consideration of his case, does not arise in view of the fact that the selected candidates are already undergoing medical test from 28.2.2005 onwards.

The learned counsel for petitioner placed before this Court the judgment of the Apex Court in **U.P.State Road Transport Corporation v. U.p.Parivahan Nigam Shishukhs Berozgar Sangh**, wherein their Lordships held as follows:

> "In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:-
>
> 1. Other things being equal, a trained apprentice should be given preference over direct recruits.
> 2. For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. Haragopal (AIR 1987 SC 1227), would permit this.
> 3. If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
> 4. The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.

The above decision was only dealing with the question as to whether a trained apprentice should be given preference over direct recruits and their Lordships held that the trained apprentice should be given preference over the direct recruits. Hence, the above decision has no application to the facts of the present case.

In the notification issued by the respondents on 27.11.2004, there is no mention that preference will be given to the persons who worked in the respondent-Corporation earlier. It is only a notification issued for selection of candidates to the post of Drivers based on their performance. The petitioner has neither challenged the notification nor the selection process adopted by the respondents. Since there is no mention in the notification that preference will be given to the candidates who worked earlier, the petitioner cannot claim any right over the same. Therefore, mandamus cannot be issued to the respondents directing them to act contrary to the notification issued by them. The question of consideration of representation of the petitioner does not arise since all the candidates who were selected, are undergoing medical test.

In view of the above, the writ petition is liable to be dismissed and is accordingly dismissed. No costs.

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K.C.BHANU, J

Date: 1.3.2005

DA

To

1 The Regional Manager, APSRTC, East Godavari Region, Rajahmundry.
2 The Depot Manager, APSRTC, Tuni Depot, Tuni, East Godavari District.

3 Two CD copies.